DOCKET NO: NNH-CV17-6072389-S	:	SUPERIOR COURT
	:	
ELIYAHU MIRLIS	:	J.D. OF NEW HAVEN
	:	
V.	:	
	:	AT NEW HAVEN
YESHIVA OF NEW HAVEN, INC. FKA	:	
THE GAN, INC. FKA THE GAN	:	
SCHOOL, TIKVAH HIGH SCHOOL AND	:	
YESHIVA OF NEW HAVEN, INC.	:	MARCH 10, 2022

DEFENDANT'S MOTION TO REARGUE RE: ORDER REGARDING DEFENDANT'S RENEWED MOTION TO REOPEN JUDGMENT FOR PURPOSES OF EXTENDING THE LAW DAY AND (2) TO SUBSTITUTE BOND[1]

Pursuant to Practice Book § 11-12, the defendant, The Yeshiva of New Haven, Inc. (the "Yeshiva" or the "Defendant"), hereby files the following motion to reargue (the "Motion to Reargue") the Court's (Cirello, J.) *Order Regarding Motion to Open Judgment and Extend the Law Day* (Doc. No. 162.10, the "Order") concerning Defendant's *Renewed Motion to (1) Reopen the Judgment of Strict Foreclosure for the Purpose of Extending the Law Day and (2) to Permit the Yeshiva to Substitute a Bond* (Doc. No. 162, the "Motion to Extend/Substitute"). The grounds for reargument are set forth in the Introduction and fully supported herein.

I. INTRODUCTION

In the Order, the Court found that Defendant did not have cash on hand to fund the bond, and on that basis declined to reach Defendant's legal arguments about its right to post a $620,000 cash bond. However, the Court was not aware that a closing on the Sale (defined herein) was delayed due to the threat of sanction by Plaintiff. Beatman Letter, Exhibit A. As set forth in correspondence attached hereto as Exhibit B, the Buyer (defined herein) has already deposited closing funds with its counsel and is ready, willing, and able to close as soon as possible once

Motion Pursuant to Practice Books § 11-11

[1] All defined terms have the same meaning as set forth in the Motion to Extend/Substitute (defined herein).

posting of a bond is approved by this Court. Defendant did not have cash on hand at the time of the prior argument due to Plaintiff's threat – yet Plaintiff benefited from that fact.

Defendant was placed in an impossible "chicken-and-egg" situation, where it could not proceed with a sale to raise funds before getting this Court's approval yet was denied the Court's approval on the basis that it did not yet have funds in hand. In addition, subsequent to the entry of the Order, the Honorable Charles S. Haight, Jr., Senior United States District Judge, who is presiding over the matter of *Mirlis v. Edgewood Elm Housing, Inc.*, Civil Action No. 3:19-cv-700 (D. Conn.) (the "Edgewood Elm Action"), entered an order requiring that *if* this Court grants the Motion to Extend/Substitute, Defendant shall transfer the Property[2] it owns to the non-profit entities that were sued in the Edgewood Elm Action, meaning Plaintiff could seek to obtain title to the Property even after receiving $620,000.

Therefore, Plaintiff's arguments about Defendant potentially reaping an unfair windfall if it was allowed to post a $620,000 bond and take title to the Property no longer have any relevance; defendant will not take title to the Property, and it will be among the pool of assets Plaintiff is attempting to reach in the Edgewood Elm Action. (The Property would also be subject to the TRO currently in place in that action).

II. FACTS AND BACKGROUND

A. Factual Background

On June 6, 2017, Plaintiff obtained a judgment (the "Judgment") against Greer and the Yeshiva in the amount of $21,749,041.10 in *Eliyahu Mirlis v. Daniel Greer, et al.*, Case No. 3:16-CV-00678 (the "Underlying Action"). Thereafter, Plaintiff initiated this foreclosure case. Following a valuation trial and appeal, the Court was asked to set a new law day for strict

[2] As set forth in the Motion to Extend/Substitute, the term "Property" shall mean the real estate owned by Defendant and known as 765 Elm Street, New Haven, Connecticut.

foreclosure. On October 25, 2021, the Court (Cirello, J.) entered a Judgment of Strict Foreclosure setting a law day of January 31, 2022. Doc. No. 152.

On May 8, 2019, Plaintiff commenced a lawsuit against Edgewood Elm Housing, Inc.; F.O.H., Inc.; Edgewood Village, Inc.; Edgewood Corners, Inc.; and Yedidei Hagan, Inc. (collectively, the "Non-Profit Entities") asserting two claims to reverse-pierce the corporate veil and to hold the Defendants liable for the Judgment. The case is styled *Mirlis v. Edgewood Elm Housing, Inc.*, Civil Action No. 3:19-cv-700 (D. Conn.) (the "Edgewood Elm Action") and is presided over by the Honorable Charles S. Haight, Jr., Senior United States District Judge. Within the Edgewood Elm Action, Judge Haight entered an injunction preventing the Non-Profit Entities from transferring or selling assets. However, Judge Haight later modified the injunction to allow the Non-Profit Entities to use or sell assets to fund the bond proposed by Defendant in the Motion to Extend/Substitute. *See Notice of Filing Ruling Concerning Defendant's Access to Funds from Supporting Foundation*, Doc. No. 158 (the "First Edgewood Elm Ruling"). As set forth in the Edgewood Elm Ruling, the Yeshiva's financially supporting foundation, Yedidei Hagan, Inc. ("Yedidei Hagan"), as well as the other related non-profit defendant entities in that action, are permitted to use funds to substitute a cash bond if authorized by this Court, as those funds would be for the financial benefit of Mr. Mirlis.

After the First Edgewood Elm Ruling entered, one of the Non-Profit Entities, Edgewood Village, Inc. ("Edgewood Village"), entered into a contract for sale (the "Sale") for two properties it owned, which would result in net proceeds of $573,603.01. Sale Contract, Exhibit C; Draft Closing Statement, Exhibit D. However, before the closing of the Sale could occur, counsel for Plaintiff wrote to counsel for the Non-Profit Entities threatening that if the closing went forward, Plaintiff, in the Edgewood Elm Action, would seek sanction, including contempt.

Beatman Letter, Exhibit A. As a result, Edgewood Village did not proceed with the closing, pending this Court's ruling on the Motion to Extend/Substitute.[3] Nevertheless the purchaser of the Edgewood Village properties (the "Buyer"), who is represented by Neil Lippman, Esq., has confirmed that it is ready and able to close as soon as this Court grants the Motion to Extend/Substitute. Lippman Letter, Exhibit B.

On February 21, 2022, in the Edgewood Elm Action, Judge Haight issued a *Ruling on Plaintiff's Motion for Reconsideration [Doc. 99]* at 22-23 (the "Second Edgewood Elm Ruling," Exhibit E) holding that if this Court were to grant the Motion to Extend/Substitute, the Property must be transferred to the Non-Profit Entities.

B. Procedural History

On January 24, 2022, the Court (Cirello, J.), entered a *Memorandum of Decision on Defendant's Motion to Open Judgment and Extend the Law Day Entry No. 153* (the "Extension Order"), denying Defendant's request to substitute a bond, but extending the law day. Within the Extension Order, the Court held: "The Court would need more than the representations made by YESHIVA's counsel to find that equity requires an opening of the judgment and extending of the provided to ELIYAHU when and how the cash bond would come into being, or any assurances that the debt owed would be paid. As such, the motion to open the judgment and extend the law day is denied, and the objection thereto is granted."

[3] Plaintiff also moved for reconsideration of the First Edgewood Elm Ruling, arguing, inter alia, that if non-profit properties were sold in order to raise funds to substitute collateral in this case, the Yeshiva Property should be required to be conveyed to one of the non-profit defendants in that case – and not go to the Yeshiva free and clear – so that it was still subject to possible judgment in Plaintiff's favor. That motion was still pending at the time of oral argument before the Court on February 18, 2022 – and Defendant had urged the Court to withhold ruling on Defendant's Motion to Open Judgment until Judge Haight had ruled on Plaintiff's Motion for Reconsideration.

On February 3, 2022, Defendant filed another Motion to Open Judgment and Extend Law Day (Docket Entry 162.00), setting forth new information addressing issues raised by the Court, including the pending real estate sale and other funds that would be used to fund the cash bond.

On February 18, 2022, the Court issued its Order denying Defendant's renewed Motion to Extend/Substitute because: "[i]n this court's order dated January 24, 2022 (Entry No.: 159.00) the court enumerated reasons why that motion to open was denied. The first reason on page two states: '1. YESHIVA currently does not have enough funds to produce the cash bond.' This fact has not changed. This eliminates any legal arguments that were made by YESHIVA."

Defendant brings this instant Motion for Reargument because: (1) at the time of the Court's February 18, 2022 Order, the Court did not have the benefit of Judge Haight's February 21st Second Edgewood Elm Ruling, which makes clear there would be no windfall to Defendant if collateral is substituted, and (2) the Sale could have closed prior to February 18th but for Plaintiff threatening the Non-Profit Entities with sanctions – and will close forthwith if this Court rules that Defendant has a legal right to substitute the previously-determined bond amount.

III. LAW AND ARGUMENT

A. Motions to Reargue Generally

"[T]he purpose of a reargument is . . . to demonstrate to the court 'that there is some decision or some principle of law which would have a controlling effect, and which has been overlooked, or that there has been a misapprehension of facts." *Jaser v. Jaser*, 37 Conn. App. 194, 202-3 (1995). "It may also be used to address alleged inconsistencies in the trial court's memorandum of decision as well as claims of law that the movant claimed were not addressed by the court . . . A motion to reargue however is not to be used as an opportunity to have a

second bite of the apple or to present additional cases or briefs which could have been presented at the time of the original argument." *Opoku v. Grant*, 63 Conn. App. 686, 692-93 (2001).

"It appears that there are five elements to be considered by the court in a motion to reargue: (1) The overlooking of a decision or principle of law which would have a controlling effect; (2) The misapprehension of facts by the trial judge; (3) Inconsistences in the trial court's memorandum of decision; (4) Claims of law that were not addressed by the court and/or (5) Reargument cannot be granted on basis of additional cases which could have been presented at the time of the original argument." *Marshall v. Marshall*, 2008 Conn. Super. LEXIS 1866, *5-6 (Super. July 24, 2008).

B. <u>Reargument is Appropriate</u>

The Court should allow reargument and should grant the Motion to Extend/Substitute because new facts have arisen since the Order that call into question the facts on which the Court relied in its ruling and weigh heavily in favor of a different result. The Sale is viable and can close any day. The Court's decision that, effectively, Defendant had to have $620,000 of cash on hand was not consistent with Judge Haight's First Edgewood Elm Ruling, specifically permitting the allowing the Non-Profit Entities to sell assets to fund the $620,000.

Consistent with the First Edgewood Elm Ruling, the Sale was scheduled, but counsel for Plaintiff wrote to Counsel for the Non-Profit Entities threatening sanctions and contempt if the Sale closed prior to this Court ruling on the Motion to Extend/Substitute. Counsel for Defendant disagreed with Plaintiff's counsel's reading of the First Edgewood Elm Ruling that prior approval for a sale was necessary; however, given the timing of this letter, it was impossible to obtain clarification from Judge Haight as to how to proceed. It was Plaintiff's position that non-profit assets could be sold ***only after substitution of collateral was approved by this Court***. If

the sale had closed prior to the February 18th oral argument on Defendant's Motion to Extend/Substitute, the facts before the Court would have been very different; Defendant would have had "enough funds to produce the cash bond." Order at 1. The threat of sanction, and Plaintiff's position that this Court's prior approval was required, caused the delay of the Sale. Plaintiff then benefited from its threat, as this Court declined to reach Defendant's legal argument about its right to substitute because it did not at the time of oral argument have $620,000 cash on hand.

This chicken-and-egg scenario and the availability of the Property to further satisfy the Judgment was later considered by Judge Haight. He ruled that the Property should be transferred to the Non-Profit Entities upon the funding of the bond. Second Edgewood Elm Ruling, Exhibit E. Thus, Judge Haight clarified that, if substitution was approved by this Court, Plaintiff would obtain the $620,000 and still be able to pursue the Property – the best of both worlds.

Counsel for the Buyer has confirmed that once this Court grants the Motion to Extend/Substitute, the Buyer will immediately close. Lippman Letter, Exhibit B. Therefore, there is no chance that Plaintiff will not get the $620,000. No speculation by the Court is required; if the Court has any concerns in this regard, we ask the Court to set a very short time deadline for Defendant to substitute the $620,000, e.g., 3 business days. Moreover, Plaintiff can still obtain title to the Property should he be successful in the Edgewood Elm Action. The inconsistency between the First and Second Edgewood Elm Rulings, on one hand, and the Order, in light of the Beatman Letter, on the other hand, can be resolved by permitting the Sale to close and the $620,000 to be made available to substitute as a cash bond.

As set forth in the Sale Contract (Exhibit C);[4] the draft settlement statement to reflect the anticipated closing proceeds (Exhibit D); and bank statements showing more than sufficient cash on hand to close (Exhibit F), Defendant will be able to fund the cash bond. Under prior rulings of this Court and the Appellate Court, Defendant submits that it has a clear legal right to substitute a $620,000 bond for the Property. However, this Court's approval is required to allow that right to be exercised.

IV. CONCLUSION

For the foregoing reasons, the Court should grant the Motion to Reargue and further grant the Motion to Extend/Substitute, and permit Defendant 3 business days from the date of the Court's ruling to substitute a $620,000 bond.

THE DEFENDANT:
Yeshiva of New Haven, Inc.

By: /s/ Jeffrey M. Sklarz

Jeffrey M. Sklarz
Green & Sklarz LLC
One Audubon Street, Third Floor
New Haven, CT 06511
(203) 285-8545
Fax: (203) 823-4546
jsklarz@gs-lawfirm.com

[4] Based on discussions with the closing lawyer, Stuart Margolis, Esq., there are no title objections so there is no "Exhibit B" to the Sale Contract.

CERTIFICATION OF SERVICE

The undersigned hereby certifies that the foregoing document has been served by electronic mail on the parties and counsel set forth below:

John Cesaroni
Zeisler & Zeisler, P.C.
10 Middle Street, 15th Floor
Bridgeport, CT 06604
(203) 368-4234
jcesaroni@zeislaw.com

Date of Service: March 10, 2022 By: /s/Jeffrey M. Sklarz/417590

EXHIBIT A

ZEISLER & ZEISLER, P.C.
Attorneys at Law

10 Middle Street, 15th Floor
Bridgeport, Connecticut 06604
Phone: (203) 368-4234
www.zeislaw.com

February 11, 2022

Via Email at rpcolbert@daypitney.com

Day Pitney LLP
Attn: Richard P. Colbert, Esq.
195 Church Street
New Haven, CT 06510

Re: Mirlis v. Edgewood Elm Housing, Inc. et al, Case No.3:19-cv-00700-CSH

Dear Rich,

I am in receipt of a copy of the Real Estate Sales Agreement (the "Agreement") between Edgewood Village, Inc. ("Edgewood Village") and Rescomm Investments LLC regarding the properties known as 727 Elm Street and 51 Pendleton Street in New Haven that was filed in the state court foreclosure proceeding against the Yeshiva of New Haven, Inc. earlier today. As we believe Edgewood Village is in violation of Judge Haight's order as a result of this Agreement, I write to request that the Agreement be terminated and proof of same be provided immediately to myself and the Superior Court and that related mitigating relief be undertaken to avoid further issue.

As you are aware, the District Court entered a temporary restraining order (the "TRO") against Edgewood Village, Inc. and the other defendants in the action captioned *Mirlis v. Edgewood Elm Housing, Inc. et al*., 3:19-cv-700, inter alia, **enjoining them** from "(a) transferring or encumbering any of their personal property, other than to pay any of their employees, with the exception of D. Greer, and perform reasonable maintenance on real property they own; or **(b) transferring or encumbering any of their real property**." (emphasis added). In addition, Judge Haight clarified the TRO, subject to our pending Motion for Reconsideration, in his Ruling on Defendants' Motion to Modify Temporary Restraining Order [Doc. 69] and Defendants' Motion to Seal Legal Fees Affidavits [Doc. 77] (the "TRO Modification Order"), ordering, in part, as follows:

> Accordingly, the Court ORDERS that Defendants may make the requested transfer **if, but only if**: (1) **the Connecticut Superior Court rules that the Yeshiva has the right to make a substitution in the Foreclosure Action**; (2) the transfer is made to the Yeshiva in accordance with the Connecticut Superior Court's instructions regarding the form and preservation of any such substitution; (3) **if Defendants must transfer assets to obtain the substitution (for example, the sale of property for funds to substitute for the judgment lien), they must do so only to the extent necessary to obtain the substitution**; and (4) the effect of a substitution, followed by a final judgment in Plaintiff's favor in the Foreclosure Action, will be immediate partial satisfaction of Plaintiff's judgment against the Yeshiva, in the amount determined by the Connecticut Superior Court in the Foreclosure Action. (emphasis added).

Taken together, it is clear that the TRO precludes the ability of your clients to sell their real estate and the TRO Modification Order makes clear that any sale of their real estate must only be to the extent necessary to obtain the substitution after the Superior Court rules that the Yeshiva has the right to make a substitution in the foreclosure action. As you are aware, the prior request for a substitution by the Yeshiva was denied by the Superior Court after the TRO Modification Order entered. While there is yet another pending request for the

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Yeshiva for the substitution of the bond, that request has not been granted, and the Superior Court has yet to set a date for a hearing.

Without waiving any rights of Mr. Mirlis, including but not limited to the adequacy or propriety of the purported sale, Edgewood Village is in violation of the TRO as modified and clarified by the TRO Modification Order by entering into the Agreement, including but not limited to, by (1) entering into an unconditional agreement for the sale of its properties without having first obtained an order from the Superior Court authorizing the substitution, and (2) transferring or attempting to transfer assets that it cannot determine are only in the amount necessary to obtain any substitution (as none has been ordered).

In light of the Agreement contemplating the closing of the sale of real property by Edgewood Village on or before February 16, 2022 and we were only provided notice of same today, we are left with no other alternative but to request immediate action. **Accordingly, demand is hereby made that <u>on or before Monday, February 14, 2022, at 2:00 PM,</u> Edgewood Village cause the Agreement to be terminated, provide proof of such termination to Mr. Mirlis through his counsel, file such proof of termination with the Superior Court and provide confirmation that real estate of your clients will only be sold in strict compliance with Judge Haight's order after the Superior Court enters a final order allowing substitution of a bond in favor of the Yeshiva in the foreclosure action.** If Edgewood Village does not do so, we will have no other alternative but to file a motion for contempt in the District Court and to seek expedited consideration of the same.

Thank you for your consideration of this matter.

Very truly yours,

Matthew K. Beatman

Matthew K. Beatman, Esq.

Cc: Eli Mirlis
Jeffrey M. Sklarz, Esq.
Stuart Margolis, Esq.

EXHIBIT B

GG&W | Goldman Gruder & Woods, LLC

Law Offices

Please Reply To Norwalk:
Norwalk Office
200 Connecticut Avenue
Norwalk, CT 06854
Telephone: 203-899-8900
Facsimile: 203-899-8915
Website: Goldgru.com

Neil Lippman
Direct Dial 203-899-8918
Email: nlippman@goldgru.com

Greenwich Office
165 West Putnam Avenue
Greenwich, CT 06830
Trumbull Office
105 Technology Drive
Trumbull, CT 06611
Tarrytown, NY Office
120 White Plains Road
Suite 350
Tarrytown, NY 10591

March 10, 2022

Via email – stuart.margolis@bymlaw.com

Stuart A. Margolis
Berdon, Young & Margolis PC
350 Orange Street
New Haven, CT 06511

Re: Edgewood Village, Inc. to Rescomm Investments LLC
Properties located at 727 Elm Street and 51 Pendleton Street, New Haven, CT
(collectively the "Properties")

Dear Stuart:

As you know, I represent Rescomm Investments, LLC. Rescomm Investments, LLC is prepared to close on the purchase of the Properties as soon as possible once sale is approved. I have the closing funds in my escrow account.

Very truly yours,

Neil A. Lippman

NAL:ak
Enclosures

EXHIBIT C

REAL ESTATE SALES AGREEMENT

AGREEMENT made as of the ____ day of February, 2022 between, **Edgewood Village, Inc.**, c/o Stuart A. Margolis, Esq., Berdon, Young & Margolis P.C., 350 Orange Street, New Haven, CT 06511 (hereinafter referred to as the SELLER, whether one or more), and **Rescomm Investments LLC**, having an address at 2 Falbo Drive, Seymour, CT 06483, (hereinafter referred to as the BUYER, whether one or more),

WITNESSETH:

1. **PROPERTY**. The SELLER, in consideration of the purchase price hereinafter specified, hereby agrees to sell and convey, and the BUYER hereby agree to purchase the real properties commonly known as **727 Elm Street, New Haven, Connecticut** and **51 Pendleton Street, New Haven, Bridgeport, Connecticut** and specifically described in Schedule A attached hereto (the "Premises") subject to the encumbrances and exceptions to title set forth or referred to in paragraph 6(e) and Schedule A (legal description and exceptions, if any) attached hereto.

2. **CONSIDERATION**. The purchase price is **FIVE HUNDRED SEVENTY THOUSAND AND 00/100 ($570,000.00) DOLLARS**, which the BUYER agrees to pay as follows:

(a) The deposit paid on or before the signing of the Agreement, receipt of which is hereby acknowledged, subject to collection;	$ 20,000.00
(b) Upon the delivery of the deed, by certified check or official bank check drawn on a bank which is a member of the New York Clearing House, or the proceeds of which are immediately available to SELLER at a local bank (this amount may vary depending on adjustments pursuant to this Agreement);	$550,000.00
TOTAL	**$570,000.00**

Any deposit made hereunder shall be paid to the SELLER's attorney who shall hold the same subject to the terms and conditions hereof and release same to SELLER at the time of closing or to the party entitled thereto upon sooner termination of this Agreement. Any other deposits held by other parties shall immediately be forwarded to SELLER's attorney to be held under the same conditions. Prior to any release of the funds to either party for any reason other than a closing, SELLER's attorney shall provide not less than seven (7) days notice to both parties. If there is a dispute as to the deposit the SELLER's attorney may pay the deposit into court whereupon the SELLER's attorney shall be relieved of all further obligation.

Mortgage company checks or similar holding company checks, unless certified, DO NOT represent immediate funds and will not be accepted at the time of closing. Trustee checks are NOT satisfactory funds for any payment required by this Agreement at the time of closing. In the event SELLER or his attorney accepts BUYER's attorney's trustee check in lieu of other funds, BUYER agrees that no stop payment order or direction will be issued with respect to such check(s). This provision shall survive the closing.

3. **DEED**. The SELLER, on receiving the total purchase price, shall, at the SELLER's cost and expense, execute, acknowledge, and deliver to the BUYER, or BUYER's permitted assigns, the usual Connecticut full covenant Warranty Deed (or appropriate Fiduciary's Deed) in proper form, to convey to the BUYER, or BUYER's permitted assigns, the fee simple of the Premises, free of all encumbrances except as aforesaid. The SELLER shall thereupon pay all real estate conveyance taxes and shall complete and deliver to the BUYER the conveyance tax forms.

4. **CLOSING**. The deed shall be delivered at the offices of Goldman, Gruder & Woods, LLC, 200 Connecticut Avenue, Norwalk, CT, or at such place in Fairfield County, Connecticut, as may be designated by BUYER's lending institution on February 16, 2022 at 10 a.m. or sooner by mutual agreement of the parties hereto.

5. **FIXTURES**. (a) Included in this sale, for the aforesaid purchase price, are the fixtures owned by SELLER, not leased, and free from security interests, liens, and other encumbrances, insofar as any of them are now located on the Premises, in their present "AS IS" condition, normal wear and tear excepted.

(b) Specifically **excluded** from the sale are: N/A

6. **TITLE**. (a) If, upon the date for the delivery of the deed as hereinafter provided, the SELLER shall be unable to deliver or cause to be delivered a deed or deeds conveying a good and marketable title to the Premises, subject only to the items set forth in Schedule A and Paragraph 6(e) hereof, then the SELLER shall be allowed a reasonable postponement of closing not to exceed thirty (30) days, or such shorter time as may be within the term of the BUYER's mortgage commitment, within which to perfect title. If at the end of said time the SELLER is still unable to deliver or cause to be delivered a deed or deeds conveying a good and marketable title to said Premises, subject as aforesaid, then the BUYER may elect to accept such title as the SELLER can convey, without modification of the purchase price, or may reject such title. Upon such rejection, all sums paid on account hereof, together with any expenses actually incurred by the BUYER for attorneys' fees, nonrefundable fees of lending institutions, survey costs and inspection fees (in the aggregate not to exceed the cost of fee title insurance based on the amount of the purchase price) shall be paid to the BUYER without interest thereon. Upon receipt of such payment, this Agreement shall terminate and the parties hereto shall be released and discharged from all further claims and obligations hereunder.

(b) The title herein required to be furnished by the SELLER shall be marketable, subject only to the items set forth in Schedule A and Paragraph 6(e) hereof, and the marketability thereof shall be determined in accordance with the Standards of Title of the Connecticut Bar Association now in force. Any and all defects in or encumbrances against the title, which come within the scope of said Title Standards, shall not constitute valid objections on the part of the BUYER, if such Standards do not so provide, and provided the SELLER furnishes any affidavits or other instruments which may be required by the applicable Standards, and further provided title will be insurable at standard premiums by a title insurance company licensed in the State of Connecticut.

(c) RELEASE OF MORTGAGES: Notwithstanding anything to the contrary contained in this Agreement or any riders attached hereto, in the event the SELLER after due diligence cannot obtain a release for any existing mortgage on the Premises at the time of the closing of title from the holder of said mortgage, or any assignee thereof, either because said holder will not release the mortgage without first receiving payment or because the holder has delayed in sending the attorney for the SELLER the release of mortgage, then BUYER and SELLER agree to close title notwithstanding the absence of the release of mortgage, provided the attorney for the SELLER furnishes the attorney for the BUYER, at the closing, with the written payoff statement and a copy of the payoff check evidencing that payment of the unreleased mortgage is to be made in full at the time of the closing, and with an undertaking to make said payment, and further provided the BUYER's Title Insurance Company will issue a fee policy at no additional premium which takes no exception for said mortgage or mortgages or which provides affirmative coverage against loss or damage by reason of said unreleased mortgage or mortgages. SELLER shall exercise due diligence to obtain any such release or releases and will upon receipt thereof immediately record the same and forward a copy or copies thereof to BUYER's attorney with recording information. If SELLER has not obtained such release within sixty (60) days after closing, he shall give to BUYER's attorney the affidavit provided for in Connecticut General Statutes Section 49-8(a), as amended, together with the necessary recording fee. This provision shall survive the closing.

(d) EXCEPTIONS TO TITLE: The Premises will be conveyed to and accepted by the BUYER subject to:

(i) Any and all zoning and/or building restrictions, limitations, regulations, ordinances, and/or laws; any and all building lines; and all other restrictions, limitations, regulations, ordinances and/or laws imposed by any governmental authority and any and all other provisions of any governmental restrictions, limitations, regulations, ordinances and/or public laws, provided the Premises are not in violation of same at the time of closing.

(ii) Real Property Taxes on the Current Grand List and any and all existing tax payments, municipal liens and assessments, coming due on or after the date of closing; the BUYER shall by acceptance of the deed assume and agree to pay, any and all such tax payments, liens and assessments which may on or after the date hereof be assessed, levied against or become a lien on the Premises.

(iii) Any state of facts which a survey and/or physical inspection of the Premises might reveal, provided same do not render title unmarketable (such exception is for purposes of this Agreement only and shall not be included in the deed, unless it was in the deed which SELLER received upon purchasing the property).

(iv) Common law, riparian or littoral rights of others and/or other rights, if any, in and to any natural watercourse or body of water flowing through or adjoining the Premises, and all statutory and other rights of others in and to any such watercourse or body of water.

(v) Unless otherwise specifically agreed between the parties in writing, any municipal assessment other than taxes (such as for sewers and the like) shall be paid on a current basis by the SELLER and the balance assumed by the BUYER at closing.

(vi) Such encumbrances as shown on Schedule A, if any.

7. **LIEN**. All sums paid on account of this Agreement and the reasonable expenses as set forth in Paragraph 6 or 11 hereof are hereby made liens on the Premises, but such liens shall not continue after default by the BUYER under this Agreement.

8. **CONDITION OF PREMISES [THIS AGREEMENT IS NOT SUBJECT TO ANY INSPECTION CONTINGENCIES]**. The BUYER agrees that he has inspected said Premises, is satisfied with the physical condition thereof and agrees to accept at closing the Premises in their present condition on an "as is" basis, reasonable wear and tear excepted, subject to the provisions of Paragraph 11 hereof.

9. **BROKER(S)**. The parties hereto agree that NONE negotiated the sale of the Premises, and the SELLER agrees to pay the commission for such services pursuant to separate agreement. This Agreement is consummated by the SELLER in reliance on the representation of the BUYER that no other broker or agent brought the Premises to the BUYER's attention or was, in any way, a procuring cause of this sale and purchase. The SELLER represents to the BUYER that no other broker or agent has any exclusive sale or exclusive agency listing on the Premises. The BUYER (jointly and severally, if more than one) hereby agrees to indemnify and hold harmless the SELLER against any liability by reason of the claim of any other broker or agent for a commission on account of this sale, provided that it is adjudged by a court of competent jurisdiction that a commission is due by reason of such other broker or agent being the procuring cause of this sale, said indemnity to include all costs of defending any such claim, including reasonable attorney's fees. In the event of any such claim, SELLER shall promptly notify BUYER, and BUYER shall have the right, but not the obligation, to assume the defense of such claim. The provisions of this paragraph shall survive the closing.

10. **APPORTIONMENT**. Real estate taxes, fire district taxes, sewer taxes, sewer assessments and sewer use charges or other municipal assessments, water charges, rents, service contracts, dues and ordinary assessments of private associations, and common charges, if any, shall be apportioned over the fiscal period for which levied. BUYER shall reimburse SELLER at closing for any fuel remaining on the Premises at then market rates. All

adjustments shall be apportioned in accordance with the custom of the Bar Association of the community where the Premises are located. Condominium special assessments due and payable prior to closing shall be SELLER's responsibility. Any errors or omissions in computing apportionment or other adjustments at closing shall be corrected within a reasonable time following the closing. The preceding sentence shall survive the closing.

11. **RISK OF LOSS**. The risk of loss or damage by fire or other casualty to the buildings on the Premises until the time of the delivery of the deed is assumed by the SELLER. Throughout the period between the date of this Agreement and the delivery of deed, SELLER shall continue to carry his existing fire and extended coverage insurance on the buildings on the Premises. In the event that such loss or damage does occur prior to the delivery of the deed, the SELLER shall be allowed a reasonable time thereafter, not to exceed thirty (30) days from such loss or damage or such shorter time as may be within the term of BUYER's mortgage commitment, within which to repair or replace such loss or damage. In the event the SELLER does not repair or replace such loss or damage within said time, the BUYER shall have the option:

(a) Of terminating this Agreement, in which event all sums paid on account hereof, together with any expenses actually incurred by the BUYER for attorneys' fees, nonrefundable fees of lending institutions, survey costs and inspection fees (in the aggregate not to exceed the cost of fee title insurance based on the amount of the purchase price), shall be paid to the BUYER without interest thereon. Upon receipt of such payment, further claims and obligations between the parties hereto, by reason of this Agreement, shall be released and discharged; or

(b) Of accepting a deed conveying the Premises in accordance with all the other provisions of this Agreement upon payment of the aforesaid purchase price and of receiving the benefit of all insurance moneys recovered or to be recovered on account of such loss or damage, to the extent they are attributable to loss or damage to any property included in this sale, less the amount of any moneys actually expended by the SELLER on said repairs.

The SELLER shall not be responsible for loss or damage to trees or other plantings due to natural causes.

12. **AFFIDAVITS**. The SELLER agrees to execute, at the time of closing of title, an affidavit, (a) verifying the non-existence of mechanics' and materialmen's lien rights, (b) verifying the non-existence of any tenants' rights, other than as set forth herein, (c) verifying the non-existence of any security interests in personal property and fixtures being sold with the Premises, (d) updating to the extent of SELLER's knowledge, any available survey, and (e) affirming that SELLER is not a "foreign person" pursuant to Internal Revenue Code Section 1445; together with any other affidavit reasonably requested by the BUYER's lender or title company as to facts within SELLER's knowledge.

13. **DELIVERY OF PREMISES**. The SELLER agrees to deliver, simultaneously with the closing of title, possession of the Premises (subject to existing tenancies and except as may be otherwise provided herein) and shall deliver all keys in SELLER's possession to the BUYER. BUYER shall have the right to make a final inspection of the Premises prior to the closing of title.

14. **LIABILITY FOR DELAYED CLOSING**. In the event of a delay in closing as set forth herein, other than as provided for under the provisions of this Agreement, through no fault of the Non-delaying Party, beyond May 30, 20--, then the Delaying Party will reimburse the Non-delaying Party from May 30, 20-- to the day of actual closing of title at the rate of $400 for each day of delay up to the actual date of closing.

15. **DEFAULT**. If BUYER is in default hereunder, or, on or before the date of closing as set forth herein, indicates that BUYER is unable or unwilling to perform and SELLER stands ready to perform SELLER's obligations, SELLER's sole remedy shall be the right to terminate this Agreement by written notice to BUYER or BUYER's attorney and retain the down payment as reasonable liquidated damages for BUYER's inability or unwillingness to perform. It is the intention of the parties hereto freely to make advance provision on the date of

this Agreement for such event in order (a) to avoid controversy, delay and expense, and (b) to specify now a reasonable amount agreeable to both for compensation to the SELLER for losses which may not be readily ascertainable or quantifiable, such as any of the following which might be necessary to place SELLER in the position SELLER would have been in had BUYER made timely performance: costs of carrying, maintaining, insuring and protecting the property; loss of interest income on the proceeds; loss of optimum market time, value and conditions; the uncertainty, delay, expense and inconvenience of finding a substitute buyer; additional commissions, fees, taxes and borrowing expenses to meet obligations entered into in anticipation of performance. In such event and upon SELLER's written notice of termination, the Premises shall be free of any claims or interest of the BUYER therein by virtue of this Agreement. In no event shall the closing, or any extension thereof, take place later than June 15, 2007, subject to the provisions of Paragraphs 6 and 11. In the event closing has not taken place by June 15, 2007, through no fault of the non-delaying party, the delaying party shall be deemed in default.

16. **NOTICES**. All notices under this Agreement shall be in writing and shall be delivered personally and receipted or shall be sent by facsimile transmission or registered or certified mail or by overnight courier, addressed to the attorney for the respective party. Notice signed by the respective attorneys shall be deemed sufficient within the meaning of this paragraph without the signature of the parties themselves.

Notices to the SELLER shall be sent to:

Stuart A. Margolis, Esq.
Berdon, Young & Margolis P.C.
350 Orange Street
New Haven, CT 06511
Telephone: 203 772-3740 Ext. 1102
Fax: 203-492-4444
Email Stuart.Margolis@bymlaw.com

Notices to the BUYER shall be sent to:

Neil A. Lippman, Esq.
Goldman Gruder & Woods, LLC
200 Connecticut Avenue
Norwalk, CT 06854
Phone 203-899-8918
Fax 203-899-8915
Email nlippman@goldmangruderwoods.com

17. **RIGHT TO WITHDRAW**. This Agreement shall not be considered or construed as an offer by the SELLER. The SELLER reserves the right to withdraw this proposed Agreement at any time prior to the signature by both parties hereto, receipt by the SELLER's attorney of the full payment of the deposit set forth herein, and delivery of a fully executed Agreement to the BUYER's Attorney.

18. **ASSIGNMENT**. This Agreement and BUYER'S rights hereunder may not be assigned by BUYER without the written consent of SELLER, and any purported assignment without such written consent shall be void and of no effect. Consent of the SELLER to assignment shall not unreasonably be withheld or delayed. Upon any effective assignment of BUYER's rights hereunder, BUYER and BUYER's assignee shall be jointly and severally liable hereunder, unless otherwise agreed by SELLER. Notwithstanding any provision herein, BUYER may assign its rights hereunder to another entity having the same beneficial ownership as the BUYER without needing the SELLER's consent.

19. **IRS REPORTING COMPLIANCE**. Unless otherwise required by law or as set forth in a separate designation agreement, BUYER shall cause BUYER's attorney to comply with any reporting requirements of the Internal Revenue Service as to this transaction. The provisions of this paragraph shall survive the closing.

20. **ACCEPTANCE OF DEED**. The delivery and acceptance of the deed herein described shall be deemed to constitute full compliance with all the terms, conditions, covenants and representations contained herein, or made in connection with this transaction, except as may herein be expressly provided and except for the warranties of title.

21. **REPRESENTATIONS**. Unless otherwise specified in writing to the contrary, none of the representations made in this Agreement or any addenda attached hereto shall survive delivery of the deed and all representations by SELLER are made to the best of SELLER's knowledge and belief.

22. **EFFECT**. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and permitted assigns of the respective parties.

23. **COSTS OF ENFORCEMENT**. Except as otherwise expressly provided herein, in the event of any litigation brought to enforce any material provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the other party.

24. **ENTIRE AGREEMENT**. All prior understandings, agreements, representations and warranties, oral and written, between Seller and Purchaser are merged in this Agreement. This Agreement completely expresses the agreement of the parties, and has been entered into by the parties after discussion with their respective attorneys and after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this Agreement. Neither this Agreement nor any provision hereof may be waived, changed or cancelled except by a written instrument signed by both parties.

25. **CAPTIONS**. The captions preceding the paragraphs in this Agreement are for ease of reference only and shall be deemed to have no effect whatsoever on the meaning or construction of the provisions of this Agreement.

26. **TENANTS**. Attached to this Agreement as Schedule B is a true and accurate copy of the current rent roll as of the date of this contract. SELLER shall continue to manage Premises in the same manner that it has in the past including collecting rent, making repairs, initiating evictions and leasing out apartments. All rents will be apportioned, based only upon rents collected, as of closing and all security deposits with interest will be turned over to BUYER. If after closing, BUYER collects any rents due to SELLER prior to closing, BUYER shall immediately turn money over to SELLER. If after closing SELLER collects money due to BUYER, SELLER shall immediately turn money over to BUYER. All payments made by Tenants shall be applied to oldest receivable. SELLER shall assign all leases to BUYER and SELLER shall prepare notice to tenants regarding sale of Premises and new landlord.

27. **TITLE CONTINGENCY.** This Agreement is contingent on the Buyer receiving a satisfactory title commitment for each property on or before February 8, 2022 at 6 pm. If Buyer is not satisfied with the title commitment for any reason, the Buyer may give Seller written notice to terminate this Agreement and immediately receive back it deposit.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day first above written.

In the Presence of:

Edgewood Village, Inc.

_____

By: _____ (L.S.)
SELLER

Its: _____
Tax ID# _____

Rescomm Investments LLC

_____

By: Rick Debriggi (L.S.)
0BC8316C3C23400...
BUYER

Tax ID# _____

Title to said Premises is to be taken in the name or names of:

_____

as _____

ATTACHMENTS:

SCHEDULE A

- Description of Premises
- Exceptions to Title [see Paragraph 6(e)(vi)]

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day first above written.

In the Presence of:

Jean Ledbury
Jean Ledbury

Edgewood Village, Inc.

By: _____ (L.S.)
SELLER
As: Secretary and Director
Tax ID# 06-1423446

Rescomm Investments LLC

_____

By: _____ (L.S.)
BUYER
Tax ID# _____

Title to said Premises is to be taken in the name or names of:

_____
as _____

ATTACHMENTS:

SCHEDULE A

- Description of Premises
- Exceptions to Title [see Paragraph 6(e)(vi)]

SCHEDULE A

727 Elm Street, New Haven, CT

Parcel No.: 22387

Legal Description: All that certain parcel of land situate in the County of New Haven, State of Connecticut, being more particularly described as follows: Southerly: By Elm Street, 85 feet; Westerly: By land now or formerly of Dr. Robert Crane, 130.62 feet, more or less; Northerly: By land now or formerly of Edwin L. Smith, 85 feet, more or less; Easterly: By land now or formerly of Henry Smith, 131 feet, more or less.

The property hereinabove described was acquired by the Grantor by instrument and recorded in Book 9246, Page 231, New Haven County, State of Connecticut

51 Pendleton Street, New Haven, CT

VOL6021 PAGE156

SCHEDULE A
DESCRIPTION

All that certain piece or parcel of land, with the buildings and improvements thereon standing, situated in the town of New Haven, County of New Haven, State of Connecticut, and known as Nos. 51 and 53 Pendleton Street and bounded and described as follows:

WESTERLY	by Pendleton Street, 43 feet, more or less;
NORTHERLY	by land now or formerly of Catherine Reilly, 120 feet, 8-3/8ths inches, more or less;
EASTERLY	in part by land now or formerly of Charles S. Yeomens and in part by land now or formerly of Charles H. Small, in all, 43 feet, more or less; and
SOUTHERLY	by land now or formerly of Hannah G. Mrion, 120 feet, 6-3/8ths inches, more or less.

Said premises are subject to:

1. Restrictions set forth in the Warranty Deed dated July 2, 1923 and recorded in Volume 987 at Page 41 of the New Haven Land Records.

2. Building lines if established, all laws, ordinances or governmental regulations, including building and zoning ordinances affecting said premises.

3. Taxes of the Grand List of October 1, 2000 and thereafter due the City New Haven and Water Use and Sewer Use Charges, all of which said Grantee herein assumes and agrees to pay as part consideration for this deed.

000668

'02 JAN 16 AM 9:38

CITY CLERK
CITY OF NEW HAVEN

EXHIBIT D

BERDON, YOUNG MARGOLIS, P.C.
Attorneys at Law
350 Orange Street, 2nd Floor
NEW HAVEN, CONNECTICUT 06511

Date February 25, 2022

Property 51 Pendleton and 727 Elm Street

Buyer Rescomm Investments, LLC

Seller Edgewood Village, Inc.

						Buyer Credits	Seller Credits
Sales Price							570,000.00
Deposit						$20,000.00	
Real Estate Tax Adj.	From	To	Yearly	Days			
51 Pendleton	2/25/2022	6/30/2022	$ 6,822.00	126			2,354.99
Real Estate Tax Adj.	From	To	Yearly	Days			
727 Elm	2/25/2022	6/30/2022	$ 3,615.28	126			1,248.01
Sewer Adj. -51	From	To	Bill Amount	Days			
(est) Pendleton	2/25/2022	3/30/2022	$ 500.00	34		$188.89	
Sewer Adj. -727 Elm	From	To	Bill Amount	Days			
(est)	2/25/2022	3/30/2022	$ 250.00	34		$94.44	
51 Pendleton							
Rent Adjustment	From	To	Bill Amount	Days			
Apt. 1	2/25/2022	2/28/2022	$ 1,000.00	4		$142.86	
Apt. 2	Vacant			4		$0.00	
Apt. 3	2/25/2022	2/28/2022	$ 900.00	4		$128.57	
Security Deposits							
Apt. 1	$2,000.00	Interest from 05/01/21 to 02/24/22				$2,001.25	
Apt. 2	None						
Apt. 3	$1,350.00	Interest from 01/01/09 to 07/31/21				$1,875.53	
Apt. 3 (ext)	$1,800.00	Interest from 08/01/21 to 02/24/22					
727 Elm	**VACANT**						
						$24,431.54	573,603.01
Balance Due Seller							549,171.46

Seller Expenses		Buyer Expenses	
Due Seller as above	549,171.46	Due Seller as above	549,171.46
City Conv. Tax	2,850.00		
State Conv Tax	4,275.00		
Berdon, Young & Margolis P.C.	2,750.00		
RWA-51 Pendleton (est)	500.00		
GNHWPCA-51 Pendleton (est)	500.00		
RWA-727 Elm (est)	250.00		
GNHWPCA-727 Elm (est)	250.00		
Fedex	50.00		
Total Expenses	11,425.00	Total Expenses	0.00
Sub-total	537,746.46	Sub-Total	549,171.46
Plus Deposit to Seller	20,000.00	Less Mortgage Financing	
Plus Other Credits		Less Other Credits	
Total Due to Seller	**557,746.46**	**Total Due from Buyer**	**549,171.46**

Seller: **Buyer:**

By: By:

EXHIBIT E

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIYAHU MIRLIS, Plaintiff, v. EDGEWOOD ELM HOUSING, INC., F.O.H., INC., EDGEWOOD VILLAGE, INC., EDGEWOOD CORNERS, INC., and YEDIDEI HAGAN, INC., Defendants.	)	Case No. 3:19-cv-700 (CSH) **FEBRUARY 21, 2022**

RULING ON PLAINTIFF'S MOTION FOR RECONSIDERATION [DOC. 99]

HAIGHT, Senior District Judge:

This diversity case arises out of an earlier, underlying action brought by Plaintiff, Eliyahu Mirlis ("Plaintiff" or "Mirlis"), against non-Parties Daniel Greer ("Greer") and the Yeshiva of New Haven, Inc. (the "Yeshiva"), wherein Mirlis alleged Greer subjected him to sexual abuse while Mirlis was a student at the Yeshiva. In this underlying action before Judge Shea, Mirlis obtained a judgment ("Judgment") against Greer and the Yeshiva for compensatory and punitive damages, in the total amount of $21,749,041.10. The Second Circuit affirmed Mirlis's Judgment against Greer and the Yeshiva. *See Mirlis v. Greer*, 952 F.3d 36 (2d Cir. 2020). Mirlis's Judgment remains unpaid, thereby setting the stage for the present action (the "Present Veil Piercing Action"), wherein Mirlis contends that the five captioned Defendants are liable to pay the Judgment under the doctrine of reverse corporate veil piercing.

The five corporate Defendants in the Present Veil Piercing Action currently operate pursuant to a Temporary Restraining Order ("TRO"), Doc. 43, which the Court filed on August

25, 2020. On January 21, 2022, the Court ruled on Defendants' Motion to Modify the Temporary Restraining Order ("Motion to Modify") after the Parties' failed attempt to resolve the issues underpinning this motion. The Court's order on the Motion to Modify, Doc. 98, (1) denied Defendants' request that they be allowed to pay legal fees and costs incurred by Greer and the Yeshiva; and (2) clarified the TRO to allow Defendants, subject to certain conditions, to provide funds[1] for the Yeshiva to satisfy the judgment of strict foreclosure rendered in favor of Plaintiff in *Mirlis v. Yeshiva of New Haven, Inc.*, Docket No. NNH-CV17-6072389-S (the "Foreclosure Action"). The Foreclosure Action is currently pending before Judge Cirello of the Connecticut Superior Court, and this Court refers to the real property against which Plaintiff obtained a judgment lien as the "Yeshiva Property."[2]

Plaintiff now moves, Doc. 99, under Local Civil Rule 7(c) for reconsideration of the second Ruling in the Court's order on Defendants' Motion to Modify ("TRO Clarification Ruling"). In Plaintiff's motion ("Motion for Reconsideration"), Plaintiff claims that permitting Defendants to provide funds to the Yeshiva to substitute for Plaintiff's existing judgment lien on the Yeshiva Property "reduces the aggregate available assets against which [Plaintiff] may enforce his [Judgment]." Doc. 99-1 at 2. This result, argues Plaintiff, is unjust because it "is in direct contradiction to the TRO's Court[-]acknowledged purpose of preventing the 'significant[] reduc[tion in] Plaintiff's ability to recover the underlying Judgment against Greer and the

---

[1] It is unclear from Defendants' briefs on their Motion to Modify what exactly they propose to substitute for Plaintiff's judgment lien against the Yeshiva Property, and this Court did not rule on the form of any such substitution. *See* Doc. 98 at 12 n.5. In line with this Court's Ruling on Defendants' Motion to Modify, and for ease of reference, this Court will refer to the proposed substitution as "funds" in line with Defendants' original request in their Motion to Modify. *See* Doc. 69 at 2.

[2] Defendants describe this property as "the real property located at 765 Elm Street, New Haven, *i.e.* the location of the historic Yeshiva school building." Doc. 69 at 2.

Yeshiva.'" *Id.* at 6 (quoting Doc. 98 at 12). Defendants represent, pursuant to Local Civil Rule 7(c)2, "that because the issue raised in Plaintiff's Motion for Reconsideration . . . was already carefully considered by the Court . . . they are refraining from responding to the motion 'unless requested by the Court.'" Doc. 101 at 1.

This Ruling decides Plaintiff's Motion for Reconsideration. It begins by providing background on the relevant Rulings, cases, and motions. Section I summarizes the relevant findings in the TRO Clarification Ruling. Section II describes the proceedings that took place in the Foreclosure Action and the Present Veil Piercing Action after the TRO Clarification Ruling. Section III summarizes and discusses the Motion for Reconsideration. In Section III, the Court particularly discusses Plaintiff's (1) assertion that Defendants would not ultimately retain title to the Yeshiva Property after transferring funds to the Yeshiva; (2) claim that the resulting reduction in Defendants' assets would culminate in a reduction of the aggregate pool of assets against which Plaintiff could enforce his Judgment; (3) argument that this aggregate reduction contradicts the purpose of the TRO in the Present Veil Piercing Action; and (4) conclusion that the Court committed clear error in its TRO Clarification Ruling.

Next, Section IV states the legal standard governing motions for reconsideration and articulates the Court's two key findings. The first finding, discussed further in Section V, is that the data Plaintiff submits as part of his Motion for Reconsideration represents new evidence. Therefore, by not considering this data in its TRO Clarification Ruling, the Court did not commit clear error. The second finding, discussed in Section VI, is that the introduction of this new evidence nonetheless provides a compelling reason to reconsider the TRO Clarification Ruling. Accordingly, Plaintiff's Motion for Reconsideration is GRANTED, and the Court's TRO

Clarification Ruling is revised to account for the new evidence. Finally, the Court summarizes its conclusion in Section VII.

I. SUMMARY OF THE JANUARY 21, 2022 TRO CLARIFICATION RULING

The operative TRO in the Present Veil Piercing Action enjoins the five corporate Defendants from "(a) transferring or encumbering any of their personal property, other than to pay any of their employees, with the exception of [Greer], and perform reasonable maintenance on real property they own; or (b) transferring or encumbering any of their real property . . . ." Doc. 43 at 1-2. In relevant part, Defendants' Motion to Modify asked the Court to allow Defendants to provide funds for the Yeshiva to satisfy the judgment of strict foreclosure rendered in favor of Plaintiff in the Foreclosure Action.

In the TRO Clarification Ruling, dated January 21, 2022, the Court observed:

> The only Plaintiff in the Foreclosure Action is Mirlis, who is also the only Plaintiff in the present action pending before this Court. The only Defendant in the Foreclosure Action is the Yeshiva. As discussed *supra*, the Yeshiva is not a Party to the present action. Regarding the Foreclosure Action, Mirlis represents that, "[s]ince July 2017, [he] has been seeking to foreclose a judgment lien on the Yeshiva's real property in New Haven . . . based on the underlying [J]udgment entered against [Greer] and the [Yeshiva] by the Hon. Michael Shea." Doc. 92 at 2. Defendants in the present action do not dispute that, in the Foreclosure Action, Mirlis obtained a judgment of strict foreclosure against "the real property located at 765 Elm Street, New Haven, *i.e.* the location of the historic Yeshiva school building." Doc. 69 at 2. . . . Defendants further represent that "[t]he judgment of strict foreclosure was affirmed on appeal earlier this year, *see Mirlis v. Yeshiva of New Haven, Inc.*, 205 Conn. App. 206 (2021), and a petition for certification to appeal to the Connecticut Supreme Court was recently denied." *Id.*
>
> On September 24, 2021, the Yeshiva filed a motion in the Foreclosure Action apparently seeking, in part, to substitute a cash bond for the judgment lien. *See* Foreclosure Action, at D.I. 147.00. In this motion, the Yeshiva references the Defendants' Motion to Modify in the present action and claims that "[i]f granted, the Yeshiva will have sufficient funds to substitute a bond" for the

> judgment. *Id.* at ¶ 4. In the Foreclosure Action motion, the Yeshiva also opposed Mirlis's separate Motion to Reset Law Day After Appeal, which requested that Judge Cirello "enter the shortest possible law day." *Id.*, at D.I. 146.00, ¶ 12. The Yeshiva, by contrast, urged that that Judge Cirello should "stay proceedings pending adjudication" of certain outstanding motions or, alternatively "set an extended law day so that the Yeshiva has sufficient time to adjudicate the [Motion to Modify]." *Id.*, at D.I. 147.00, ¶ 9. Judge Cirello has set the new law day at January 31, 2022. *See id.*, at D.I. 152.00; D.I. 146.20. However, Judge Cirello has not yet ruled on the Yeshiva's motion to substitute.

Doc. 98 at 9-10 (footnote omitted).

Given the foregoing summary of the Foreclosure Action, the Court then identified the issues it did not resolve, either because they were better suited to the discretion of the Connecticut Superior Court or because they were outside the scope of its TRO Clarification Ruling. For example, the Court did not address Defendants' proposal in their Reply Memorandum in Support of Motion to Modify Temporary Restraining Order ("Defendants' Reply Memorandum") to "*purchase* the Yeshiva building for the fair-market value found by the Court in the [Foreclosure Action]" ("Defendants' Purchase Proposal"). Doc. 76 at 3. The Court noted that Defendants Purchase Proposal, "(1) which Defendants apparently mention for the first time as an alternative to funding the Yeshiva's satisfaction of the Foreclosure Action lien and (2) which Plaintiff does not accept, falls outside the scope" of the Court's Ruling. Doc. 98 at 10 n.4.

Next, turning directly to Defendants' request to modify the TRO, the Court stated that "the TRO is meant to prevent Defendants from transferring or encumbering their personal or real property (1) for the benefit of non-Party Yeshiva, non-Party Greer and related non-Parties; and (2) in a way that significantly reduces Plaintiff's ability to recover the underlying Judgment against Greer and the Yeshiva." *Id.* at 12. Furthermore:

> Although transferring funds from Defendants such that the Yeshiva can "[keep] its school building and [continue] to operate," certainly

> benefits the Yeshiva, it does not significantly reduce Plaintiff Mirlis's ability to recover the underlying Judgment. Doc. 69 at 11. Mirlis is also the Plaintiff in the Foreclosure Action against the Yeshiva. Accordingly, unlike Defendants' proposal to pay the Yeshiva's lawyers, Mirlis himself would be the ultimate recipient of any funds authorized by the Connecticut Superior Court in lieu of his judgment lien. Moreover, as Mirlis states, the Foreclosure Action is "based on the underlying judgment entered against [Greer] and the Yeshiva by the Hon. Michael Shea." Doc. 92 at 2. Therefore, the concern underpinning the TRO – that Defendants will place their assets beyond Mirlis's reach and reduce his ability to recover the Judgment – is not implicated by Defendants' second proposed modification.

Id. at 12-13.

Based on this analysis, the Court determined that:

> I need not "modify" the TRO to "allow" the Defendants to take the proposed action with respect to Foreclosure Action. The more appropriate course for me to take is to *clarify* the TRO by stating, as I do, that I would not regard Defendants' transfer of funds to the Yeshiva to satisfy the judgment lien as a violation of the TRO the Court entered in the present case.

Id. at 14.

However, recognizing the need for certain conditions circumscribing Defendants' requested transfer of funds, the Court ordered that:

> Defendants may make the requested transfer if, but only if: (1) the Connecticut Superior Court rules that the Yeshiva has the right to make a substitution in the Foreclosure Action; (2) the transfer is made to the Yeshiva in accordance with the Connecticut Superior Court's instructions regarding the form and preservation of any such substitution; (3) if Defendants must transfer assets to obtain the substitution (for example, the sale of property for funds to substitute for the judgment lien), they must do so only to the extent necessary to obtain the substitution; and (4) the effect of a substitution, followed by a final judgment in Plaintiff's favor in the Foreclosure Action, will be immediate partial satisfaction of Plaintiff's judgment against the Yeshiva, in the amount determined by the Connecticut Superior Court in the Foreclosure Action.
>
> Finally, if the Connecticut Superior Court authorizes the Yeshiva to substitute cash for the judgment lien in the Foreclosure Action,

> Defendants must transfer funds to the Yeshiva only in the precise amount the Connecticut Superior Court authorizes.
>
> This is the resolution in the Foreclosure Action that the record on the present motion contemplates. For the reasons stated *supra*, Defendants' [Motion to Modify] is DENIED. To the extent that the Motion to Modify asks that the TRO be clarified, this request is GRANTED, and the TRO is clarified in the manner set forth in this Ruling.

Id. at 15-16.

II. SUBSEQUENT PROCEEDINGS IN THE FORECLOSURE ACTION AND THE PRESENT VEIL PIERCING ACTION

On January 23, 2022, the Yeshiva filed notice in the Foreclosure Action of the TRO Clarification Ruling in the Present Veil Piercing Action. *See* Foreclosure Action, at D.I. 158.00. In its Notice, the Yeshiva concluded that "assuming the [Connecticut Superior Court] affords [the Yeshiva] its right to substitute a cash bond as collateral in lieu of the [Yeshiva Property], [the Yeshiva] has immediate access to the funds necessary to do so." *Id.* at 2.

However, on January 24, 2022, following oral argument, Judge Cirello denied the Yeshiva's motion to make a substitution in the Foreclosure Action. *See* Foreclosure Action, at D.I. 159.00. In making this decision (the "January 24, 2022 Order"), Judge Cirello "[took] into account the entire record as well as," *inter alia*, the following facts: (1) the Yeshiva currently does not have enough funds to produce the cash bond; (2) the Yeshiva's counsel did not present potential buyers for the assets mentioned during the arguments or a plan on how the bond would be financed; and (3) the Yeshiva's counsel could not provide the current market value of the school and relied upon the appraised value of the subject property, which was $620,000 pursuant to a prior decision dated February 24, 2020. *Id.* at 2-3. Judge Cirello further stated that, if he were to grant the Yeshiva's motion to substitute, "there are no reassurances provided to [Plaintiff Mirlis] when and how the cash bond would come in to being, or any assurances that the debt owed would be paid."

Id. at 3. Nevertheless, Judge Cirello extended the law day to February 22, 2022. *Id.* Plaintiff represents that Judge Cirello extended the law day "because applicable precedent required him to do so in order to afford the Yeshiva an opportunity to appeal." Doc. 100 at 2.

On January 28, 2022, Plaintiff filed his Motion for Reconsideration in the Present Veil Piercing Action. In this context, Plaintiff stated that he "anticipates that the Yeshiva will likely appeal," and "the appeal will automatically stay enforcement of the judgment of strict foreclosure." Doc. 99-1 at 1 n.1. Therefore, "Mr. Mirlis . . . seeks reconsideration to protect his rights in the unlikely event that the Yeshiva is successful on appeal or otherwise." *Id.*

On February 3, 2022, the Yeshiva filed a Renewed Motion in the Foreclosure Action to (1) Reopen Judgment for Purposes of Extending the Law Day and (2) to Substitute Bond (the "Second Motion to Open"). *See* Foreclosure Action, at D.I. 162.00. In the Second Motion to Open, which the Court understands to be the appeal Plaintiff anticipated, the Yeshiva again requests permission to substitute a bond. *Id.* at ¶ 3. The Yeshiva also requests that the Connecticut Superior Court "extend the law day to March 22, 2022." *Id.*

In the Second Motion to Open, the Yeshiva argues that "the concerns raised by [Judge Cirello] in the [January 24, 2022 Order] have been addressed." *Id.* at ¶ 19. Specifically, the Yeshiva states, *inter alia*, that Defendants will have "$620,000.00 cash on hand within a short period of time." *Id.* at ¶ 10. These funds would be generated from two sources: (1) sale proceeds from the sale of two real estate parcels that are "anticipated" to be "in excess of $500,000;" and (2) Defendants' "cash reserves." *Id.* Regarding the two real estate parcels, the Yeshiva notes that Defendants in the Present Veil Piercing Action "are about to enter into contract for the sale of property located at 51-53 Pendleton Street, New Haven and 727 Elm Street, New Haven. A closing is expected to occur prior to the end of February 2022." *Id.* at ¶ 11. Accordingly, the Yeshiva

"anticipates" being able to finance a bond substitution "by February 28, 2022." *Id.* at ¶ 2. Plaintiff objects to the Second Motion to Open on the grounds that, *inter alia*, the Yeshiva has no right to substitute a bond in the Foreclosure Action and that the valuation of $620,000 would be inequitable. *See* Foreclosure Action, at D.I. 165.00. The Connecticut Superior Court has not yet ruled on the Yeshiva's Second Motion to Open. The Yeshiva's reply to Plaintiff's objection claims, *inter alia*, that (1) the value of the property for purposes of substituting a bond has already been established; and (2) the Yeshiva's proposed sale will generate sufficient cash proceeds to post a cash bond. *See* Foreclosure Action, at D.I. 166.

On February 4, 2022, Plaintiff filed a Request for Expedited Consideration of his Motion for Reconsideration ("Request for Expedited Consideration"), Doc. 100, in the Present Veil Piercing Action. Plaintiff argued:

> [T]his Court's [Ruling] on the Motion for Reconsideration necessarily impacts the Second Motion to Open and would be beneficial to the parties and the Superior Court. As this Court is aware, it is [the TRO Clarification Ruling] that permitted the Defendants, on certain conditions, to provide the funding to the Yeshiva for a cash bond if permitted by the Superior Court. If the Motion for Reconsideration is granted and the Court alters its decision on permitting the Defendants to fund a bond for the Yeshiva (if approved by the Superior Court on the terms delineated by this Court), the Yeshiva and by implication the Defendants can no longer rely on the Defendants' assets to fund a bond.

Doc. 100 at 3. The Court stated that it would decide Plaintiff's Motion for Reconsideration on or before February 21, 2022. *See* Dkt. 102.

On February 11, 2022, the Yeshiva filed the following documents in support of its Second Motion to Open in the Foreclosure Action: (1) a signed sales contract concerning "727 Elm Street and 51 Pendleton Street, New Haven, Connecticut;" and (2) a redated bank statement of "FOH

Inc." (which the Court understands to be a Defendant in the Present Veil Piercing Action). Foreclosure Action, at D.I. 164.00.

III. DISCUSSION OF PLAINTIFF'S MOTION FOR RECONSIDERATION

As discussed *supra*, Plaintiff represents that his Motion for Reconsideration is an effort to "protect his rights" *if* the Connecticut Superior Court grants the Yeshiva permission to substitute funds for the judgment lien in the Foreclosure Action. Doc. 99-1 at 1 n.1. Since the Yeshiva's Second Motion to Open is presently *sub judice* before Judge Cirello, it remains to be seen whether the Yeshiva will ultimately receive this permission.[3] If it does, the TRO Clarification Ruling enables the Defendants in the Present Veil Piercing Action, subject to certain conditions, to transfer funds to the Yeshiva to cover amount of the substitution.

Based on the assertion that Defendants would not ultimately retain title to the Yeshiva Property after transferring these funds, Plaintiff's Motion for Reconsideration argues that a substitution of funds in the Foreclosure Action would result in a reduction of the aggregate available assets against which he could enforce his Judgment. Because this aggregate reduction contradicts the purpose of the TRO, Plaintiff argues, it would result in manifest injustice. Moreover, Plaintiff claims that the Court did not consider the data underpinning his Motion for Reconsideration and the Court has therefore committed clear error. Accordingly, Plaintiff concludes that the Court should grant his Motion for Reconsideration. The below sections discuss Plaintiff's motion in more detail.

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[3] In line with the Court's TRO Modification Ruling, this Ruling does not address (1) whether the Yeshiva has the right to make a substitution in the Foreclosure Action; (2) the form of any such substitution; (3) the cash value, if applicable, of any such substitution; or (4) any related questions. These issues are suited for the Connecticut Superior Court, and nothing in this Ruling expresses or intimates any views on the part of this Court on how they should be resolved.

A. Plaintiff's Motion Stems from his Assertion that Defendants Would Not Ultimately Retain Title to the Yeshiva Property After Their Proposed Fund Transfer to the Yeshiva

The foundation of Plaintiff's Motion for Reconsideration is this fact: after giving the Yeshiva funds to cover a substitution authorized by the Connecticut Supreme Court, the Defendants in the Present Veil Piercing Action would not ultimately retain title to the Yeshiva Property. Instead, the Yeshiva itself would retain title to the Yeshiva Property "free and clear" of Plaintiff's Judgment. *See id.* at 1. The immediate consequence of this fact, Plaintiff argues, is that any fund transfer would effectuate a reduction in Defendants' assets equal to the amount of the fund transfer. *See id.* at 5. The Court notes that, if Defendants would ultimately retain title to the Yeshiva Property after the fund transfer, their assets would not ultimately be reduced in the amount of the fund transfer. This is because gaining the title to the Yeshiva Property would offset the loss Defendants accrued by giving the Yeshiva funds to substitute for the judgment lien. Therefore, Defendants would ultimately break even, and their assets would not be reduced. However, since Plaintiff represents that Defendants would not retain title to the Yeshiva Property, there would be nothing to balance the loss, and Defendants would incur a reduction in assets equal to the amount of the fund transfer.

B. Plaintiff Argues that a Reduction in Defendants' Assets Leads to an Aggregate Reduction Problem

Plaintiff further argues that this reduction in Defendants' assets would result in a reduction of the aggregate available assets against which Plaintiff could enforce his Judgment if he is successful in the Present Veil Piercing Action. Plaintiff illustrates his argument on this point with an example. *See id.* at 5. Plaintiff begins his example by making two assumptions for the purposes of his Motion for Reconsideration only: (1) Defendants have an aggregate pool of assets worth

$10 million[4] from which Plaintiff could recover if successful in the Present Veil Piercing Action and (2) the Yeshiva Property is worth $620,000.[5] Plaintiff then uses these figures as follows.

If Defendants' assets were not reduced through the fund transfer described in Section III.A *supra*, Plaintiff states that he could recover the full amount of these assets if he is successful in the Present Veil Piercing Action. The total value of Defendants' assets in Plaintiff's example is $10 million. Additionally, Plaintiff would acquire $620,000 by selling the Yeshiva Property after foreclosing on his judgment lien in the Foreclosure Action. Accordingly, if Defendants' assets were not reduced through the fund transfer as described in Section III.A *supra*, there would be $10.62 million available for Plaintiff to partially recover his Judgment if he is successful in the Present Veil Piercing Action.

By contrast, if Defendants' assets were reduced through the fund transfer described in Section III.A *supra*, then Plaintiff would collect the amount of Defendants' assets minus the amount of the fund transfer. If the Defendants transferred $620,000 to the Yeshiva to substitute for the value of the Yeshiva Property, Defendants would have assets worth only $9.38 million: $10 million minus $620,000. Additionally, Plaintiff would acquire $620,000 in the Foreclosure Action via the substitution and fund transfer. Accordingly, if Defendants' assets were reduced through the fund transfer as described in Section III.A. *supra*, there would be only $10 million ($9.38 plus $620,000) available for Plaintiff to partially recover his Judgment if he is successful

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[4] This figure comes from Defendants' representation that they "collectively own real property in New Haven conservatively valued at over $10 million." Doc. 69 at 3.

[5] Plaintiff represents that "the $620,000 valuation of the property is based on appraisals from 2019 and a court valuation decision from approximately two years ago, so that the actual value is believed to be substantially higher." Doc. 99-1 at 5. In turn, Plaintiff argues, the Aggregate Reduction Problem is exacerbated, since "the reduction in the recovery on the [Judgment] would be substantially more than $620,000." *Id.*

in the Present Veil Piercing Action. The Court refers to the issue Plaintiff identifies through his example as the "Aggregate Reduction Problem."[6]

In describing the Aggregate Reduction Problem, Plaintiff emphasizes that "neither the Yeshiva nor the Defendants, individually or collectively, have sufficient resources to satisfy the underlying [Judgment] of approximately $22-$23 million." *Id.* at 4. Indeed, the Court notes that, if Defendants had assets far exceeding the amount of Plaintiff's Judgment, it is highly unlikely that reducing such assets by the amount of the fund transfer would adversely affect Plaintiff's ability to recover the Judgment if he is successful in the Present Veil Piercing Action. However, Defendants themselves represent that the aggregate value of the properties they own is $10 million. *See* Doc. 69 at 3. This figure is significantly less than the amount of Plaintiff's Judgment. Moreover, although Defendants represent that most of their rental properties "are also income producing," they do not represent that their assets are worth more than the amount of Plaintiff's Judgment. *Id.* at 6.

C. Plaintiff Claims the Aggregate Reduction Problem Results in Manifest Injustice

Plaintiff argues that the Aggregate Reduction Problem "would be manifestly unjust" and "would run contrary to the purpose of the TRO" in the Present Veil Piercing Action. *Id.* at 7. In this context, Plaintiff quotes the Court's finding that the TRO is intended "to **prevent Defendants from transferring** or encumbering **their personal or real property** (1) for the benefit of the Yeshiva, Greer and related non-Parties; and (2) **in a way that significantly reduces Plaintiff's ability to recover the underlying Judgment against Greer and the Yeshiva**." *Id.* at 3 (quoting Doc. 98 at 12 (emphasis added)). Moreover:

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[6] Plaintiff refers to this issue as the "double-reduction problem." *See, e.g.*, Doc. 99-1 at 6. The Court finds that "Aggregate Reduction Problem" describes the issue more accurately. Accordingly, the Court uses this term in its Ruling.

> [Plaintiff] respectfully submits that the Court appears to have not considered the second purpose of the TRO in ostensibly clarifying it to permit the Defendants to transfer assets to the Yeshiva to substitute for [Plaintiff's] judgment lien in exchange for no value and permitting the **Yeshiva** to then retain title to its real property that has been the subject of a judgment lien and related foreclosure action **free and clear** of the judgment lien and any further claim of [Plaintiff].

Id.

D. Plaintiff Claims that the Court Committed Clear Error

Finally, Plaintiff argues (1) that the Court "overlooked" the "data" discussed in his Memorandum of Law in Support of Motion for Reconsideration ("Motion for Reconsideration Memorandum"), Doc. 99-1, when deciding the TRO Clarification Ruling; and (2) this amounts to "a clear error" justifying reconsideration of the TRO Clarification Ruling. *Id.* at 2-3 (citing, *inter alia*, *Shrader v. CSX Transp.*, 70 F.3d 255, 257 (2d Cir. 1995) ("The standard for granting [ ] a motion [for reconsideration] is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court.")); *see also id.* at 6-7.

In support of this claim, Plaintiff purports to identify where the Parties introduced this data in their submissions on Defendants' Motion to Modify. First, Plaintiff notes that, in his Memorandum in Opposition to Defendants' Motion to Modify Temporary Restraining Order ("Opposition to Defendants' Motion to Modify"), Doc. 71, he "generally identified the effect that modifying the TRO to allow the Defendants to transfer their assets to the Yeshiva so it could substitute those assets for a judgment lien would have on his ability to satisfy his judgment." *Id.* at 6 (citing Doc. 71 at 8). Second, Plaintiff represents that Defendants "directly identified and addressed the [Aggregate Reduction Problem]" in Defendants' Reply Memorandum. *Id.* In this

context, Plaintiff references Defendants' Purchase Proposal, excerpted below, which the Court deemed outside the scope of its TRO Clarification Ruling:

> [I]n light of Plaintiff s objection that funds given by the Defendants to the Yeshiva to satisfy the foreclosure deprives him of such assets should he later prove his veil piercing claims, the Defendants have a simple and logical solution to that concern. Rather than the Defendants giving funds to the Yeshiva so that the Yeshiva can satisfy its foreclosure action and still retain ownership of the property, the Defendants will instead agree themselves to purchase the Yeshiva building for the fair-market value found by the court in the foreclosure action. In addition, the Defendants will agree that such ownership of the Yeshiva building (likely by defendant Yedidei Hagan, Inc. for continuing religious purposes) shall then still be an asset available to Plaintiff should he later prove his veil piercing claims against the Defendant(s). **Thus, Plaintiff will be paid the $620,000 court ordered fair market value of the property, in cash, and still have the ability to collect a second time against the Yeshiva building should he later recover a judgment in this action. Plaintiff suffers no harm whatsoever by the Court allowing the Defendants to purchase the Yeshiva building out of foreclosure under these circumstances.**

Id. at 6-7 (quoting Doc. 76 at 3-4 (emphasis added)). Third, Plaintiff notes that, in his Sur-Reply to Defendants' Reply Memorandum, Doc. 92, he "opposed the Defendants' efforts to negotiate a resolution of the bond substitution branch of the Motion to Modify through a Court filing, but did not dispute the very real [Aggregate Reduction Problem]." *Id.* at 7. Here, Plaintiff notes the Court's finding that Defendants' proposal was outside the scope of the TRO Clarification Ruling, but states that "the Court did not consider" the effect of the Aggregate Reduction Problem on Plaintiff's ability to collect on his judgment. *Id.* at 7.

IV. LEGAL STANDARD AND SUMMARY OF APPLICATION

"A motion for reconsideration under Local Rule 7 is not favored and rarely granted." *SLSJ, LLC v. Kleban*, No. 3:14-CV-390 (CSH), 2020 WL 6806160, at *2 (D. Conn. Nov. 19, 2020); *see also* D. Conn. L. Civ. R. 7(c)(1) (dictating that a motion for reconsideration "shall satisfy the strict

standard applicable to such motions" and "will generally be denied unless the movant can point to controlling decisions or data that the court overlooked in the initial decision or order").

However, the Court can "reconsider a prior decision in the same case if there has been an intervening change in controlling law, there is new evidence, or a need is shown to correct a clear error of law or to prevent manifest injustice." *Chance v. Machado*, No. 3:08-CV-000774 CSH, 2013 WL 1830979, at *1 (D. Conn. Apr. 30, 2013) (citation and internal quotation marks omitted). Moreover, "when a court has ruled on an issue, that decision should generally be adhered to by that court in subsequent stages in the same case unless cogent and compelling reasons militate otherwise." *Johnson v. Holder*, 564 F.3d 95, 99 (2d Cir. 2009) (internal quotation marks omitted) (quoting *United States v. Quintieri*, 306 F.3d 1217, 1225 (2d Cir. 2002)). For example, in a separate matter, this Court granted a plaintiff's motion to reconsider the Court's ruling when the "justice of the cause" required further proceedings on an issue not sufficiently argued during the relevant hearing. *Kleban*, 2020 WL 6806160, at *2.

"Courts ordinarily have not defined precisely what constitutes clearly erroneous or manifest injustice for reconsideration purposes. At least one court has held . . . that reconsideration is not warranted unless the prior decision is 'dead wrong.'" *In re Air Crash at Belle Harbor, New York on Nov. 12, 2001*, No. 02 CIV. 3143 RWS, 2007 WL 4563485, at *1 n.1 (S.D.N.Y. Dec. 18, 2007). In Plaintiff's Motion for Reconsideration Memorandum, he states that, "[i]n the context of a motion for reconsideration, 'manifest injustice' is defined as an error committed by the trial court that is direct, obvious, and observable." Doc. 99-1 at 2 (citing *Talyosef v. Saul*, No. 3:17-CV-01451 (KAD), 2020 WL 3064229, at *3 (D. Conn. June 9, 2020) (quoting *Corpac v. Rubin & Rothman, LLC*, 10 F. Supp. 3d 349, 354 (E.D.N.Y. 2013)), *aff'd*, 848 F. App'x 47 (2d Cir. 2021)).

Applying this standard to Plaintiff's Motion for Reconsideration, the Court makes two findings. First, the data submitted in Plaintiff's Motion for Reconsideration Memorandum constitutes new evidence, which was not made available to the Court at the time of its TRO Clarification Ruling. Therefore, the Court did not commit clear error resulting in manifest injustice by "overlook[ing]" this data in its TRO Clarification Ruling. Doc. 99-1 at 3. This finding is discussed in Section V, *infra*. Second, the introduction of this new evidence nonetheless provides a compelling reason to reconsider the TRO Clarification Ruling. Specifically, it results in the Aggregate Reduction Problem, which violates the purpose of the TRO in the Present Veil Piercing Action. This finding is discussed in Section VI, *infra*.

V. THE COURT'S TRO CLARIFICATION RULING WAS NOT IN ERROR

As summarized in Section III *supra*, the Aggregate Reduction Problem hinges on (1) the fact that Defendants would not ultimately retain title to the Yeshiva Property after transferring funds to the Yeshiva, so nothing would offset Defendants' asset reduction; and (2) the argument that Defendants' asset reduction would unjustly result in an aggregate reduction of the pool of assets from which Plaintiff could recover his Judgment if he is successful in the Present Veil Piercing Action. However, at the time of its TRO Clarification Ruling, the Court was not aware that Defendants would not ultimately retain title to the Yeshiva Property after transferring funds to the Yeshiva. This was because (1) Defendants represented in briefs on their Motion to Modify that the Yeshiva Property would be subject to the TRO after the proposed fund transfer; and (2) Plaintiff did not specifically state the factual analysis underpinning the Aggregate Reduction Problem in his briefs opposing the Motion to Modify. Accordingly, the fact that Defendants would not ultimately retain title to the Yeshiva Property after transferring funds to the Yeshiva is new evidence presented as part of Plaintiff's Motion for Reconsideration. Therefore, the Court did not

overlook this data, and the Court's findings in its TRO Clarification Ruling did not amount to clear error or manifest injustice.

A. Defendants Represented that the Yeshiva Property was Subject to the TRO, which Would Solve the Aggregate Reduction Problem

Defendants' representations in support of their Motion to Modify suggested that the Yeshiva Property would, ultimately, be subject to the TRO after the proposed fund transfer and thus be available to satisfy Plaintiff's Judgment if he succeeds in the Present Veil Piercing Action. If this were true, Defendants' contemplated fund transfer would be offset by the value of the Yeshiva Property. Therefore, Defendants' assets would not ultimately be reduced, and the Aggregate Reduction Problem would not arise.

Several times in the briefs supporting their Motion to Modify, Defendants state that the Yeshiva Property would be subject to the TRO. In their initial Motion to Modify, for example, Defendants represented that they did not challenge the TRO remaining in place as to any transfer and/or encumbrances relating to the real property they own, "other than if necessary to sell a property to satisfy the debt owed on the foreclosure of the Yeshiva school building, **which would then also be subject to the TRO.**" Doc. 69 at 3 n.2 (emphasis added). Similarly, in Defendants' Reply Memorandum, they reiterate:

> As explained in the opening motion . . . if this Court allows for the requested modification of the TRO and the Defendants indeed satisfy the judgment of strict foreclosure and then become the owners of the Yeshiva's school building, **the building would also become subject to the TRO in this case** as property owned by the Defendants.

Doc. 76 at 4 (emphasis added).[7]

[7] The Court interprets these statements about the "Yeshiva['s] school building" as referring to the Yeshiva Property. Moreover, when Defendants describe their proposed fund transfer as

As discussed in Section I *supra*, the TRO in the Present Veil Piercing Action enjoins Defendants from transferring or encumbering any of their real or personal property, which would be available to satisfy Plaintiff's Judgment if he is successful in the Present Veil Piercing Action. Accordingly, Defendants' representation that the Yeshiva Property would be subject to the TRO suggests that the Yeshiva Property would ultimately become the property of Defendants and thus be available to satisfy Plaintiff's Judgment. Therefore, the Aggregate Reduction Problem would be avoided.

By contrast, in his Motion for Reconsideration Memorandum, Plaintiff argues that Defendants' Purchase Proposal "directly identified" the Aggregate Reduction Problem, "but the Court did not consider the reduction of available assets that will be caused by the [TRO Clarification Ruling] on [Plaintiff's] ability to collect on his [Judgment.]." Doc. 99-1 at 6-7. As discussed *supra*, Defendants' Purchase Proposal specifically contemplated purchasing the Yeshiva Property and agreeing that ownership of the Yeshiva Property, "likely by [D]efendant Yedidei Hagan, Inc." will then "still be an asset available to Plaintiff should he later prove his veil piercing claims against the Defendant(s)." Doc. 76 at 3. The Court ruled that Defendants' Purchase Proposal fell outside the scope of its TRO Clarification Ruling. Doc. 98 at 10 n.4.

However, simply because the Court's TRO Clarification Ruling did not address Defendants' alternative ideas about how they might ultimately acquire the Yeshiva Property does not mean that the Court failed to consider the Aggregate Reduction Problem. For the Court's purposes, it was sufficient to know that the Yeshiva Property would eventually be subject to the

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"Plaintiff receives funds now, and the Yeshiva keeps its school building and continues to operate," the Court does not interpret these statements as contradicting Defendants' representations that the Yeshiva Property would be subject to the TRO. Doc. 69 at 11. Instead, in this context, the Yeshiva "keep[ing] its school building" apparently refers to the Yeshiva's continued operation rather than the actual title to the Yeshiva Property.

TRO and hence available to satisfy Plaintiff's Judgment if he succeeds in the Present Veil Piercing Action. In this context, the Court notes that the Parties were attempting to resolve the issues underpinning the Motion to Modify prior to the Court's TRO Clarification Ruling. *See* Dkt. 95. If Defendants were negotiating with Plaintiff about the details of how the Yeshiva Property would ultimately become subject to the TRO and/or which Defendant would ultimately own the Yeshiva Property, this was, as the Court stated, "outside the scope" of the TRO Clarification Ruling. Doc. 98 at 10 n.4.

B. Plaintiff Did Not Present the Factual Analysis in His Motion for Reconsideration Memorandum in His Briefs Opposing Defendants' Motion to Modify

Plaintiff did not present the factual analysis underpinning the Aggregate Reduction Problem in his submissions on Defendants' Motion to Modify, which further supports the Court's finding that the TRO Clarification Ruling was not in error.

In Plaintiff's Motion for Reconsideration Memorandum, he refers to page eight of his Opposition to Defendants' Motion to Modify, where he claims that he "generally identified the effect that modifying the TRO to allow the Defendants to transfer their assets to the Yeshiva so it could substitute those assets for a judgment lien would have on his ability to satisfy his judgment." Doc. 99-1 at 6. However, this portion of Plaintiff's Opposition to Defendants' Motion to Modify mainly discusses Plaintiff's counterarguments to Defendants' assertions that they were established to support the Yeshiva. Moreover, although Plaintiff refers to Defendants dissipating their "liquid assets" to "pay the attorneys' fees and expenses of the Yeshiva and provide it with funds to post a bond," Plaintiff neither (1) counters Defendants' claim that the Yeshiva Property will ultimately be subject to the TRO; nor (2) lays out the Aggregate Reduction Problem as he does in his Motion

for Reconsideration Memorandum. *See* Doc. 71 at 8. Indeed, nowhere in his briefs opposing Defendants' Motion to Modify does Plaintiff directly lay out the Aggregate Reduction Problem.

Plaintiff's claim that he opposed Defendants' Purchase Proposal as an improper effort "to negotiate a resolution," but did not dispute the Aggregate Reduction Problem it allegedly identifies does not undermine the Court's finding on this point. Doc. 99-1 at 7. First, as discussed in Section V.A *supra*, Defendants' Purchase Proposal merely proposed an alternative mechanism by which Defendants would ultimately acquire the Yeshiva Property. Moreover, Defendants represented several times in their briefing on the Motion to Modify that the Yeshiva Property would be subject to the Court's TRO after the proposed fund transfer to the Yeshiva. If this were the case, as discussed in Section V.A *supra*, the Aggregate Reduction Problem would not exist. Second, not disputing an issue allegedly raised by an opposing Party does not equate to affirmatively raising that issue. Although Defendants' Purchase Proposal was made "in light of Plaintiff's objection that funds given by the Defendants to the Yeshiva to satisfy the foreclosure deprives him of such assets should he later prove his veil piercing claims," Plaintiff did not specifically identify the Aggregate Reduction Problem in his Opposition to Defendants Motion to Modify. Doc. 76 at 3. As discussed above, if Plaintiff objected to the specifics of Defendants' Purchase Proposal during Parties' failed attempts to resolve the Motion to Modify prior to the Court's TRO Clarification Ruling, these side negotiations were not within the scope of that Ruling.

In sum, the fact that Defendants would not ultimately retain title to the Yeshiva Property after their proposed fund transfer is new evidence presented in Plaintiff's Motion for Reconsideration Memorandum. Therefore, the Court did not commit clear error in its TRO Clarification Ruling by "overlook[ing]" this data. Doc. 99-1 at 3.

VI. THE COURT'S TRO CLARIFICATION RULING MUST NONETHELESS BE RECONSIDERED IN LIGHT OF NEW EVIDENCE

The new evidence presented in Plaintiff's Motion for Reconsideration Memorandum nonetheless represents a "compelling" reason to reconsider the Court's TRO Clarification Ruling. *Johnson*, 564 F.3d at 99. Specifically, this new evidence results in the Aggregate Reduction Problem, which violates a key purpose of the TRO: "to prevent Defendants from transferring or encumbering their personal or real property . . . in a way that significantly reduces Plaintiff's ability to recover the underlying Judgment against Greer and the Yeshiva." Doc. 98 at 12. Accordingly, Plaintiff's Motion for Reconsideration is GRANTED.

However, the Court also reiterates that, if Defendants would ultimately retain title to the Yeshiva Property to offset the loss of funds due to their proposed transfer, the Aggregate Reduction Problem would not arise. Accordingly, the Court revises its TRO Clarification Ruling to include an additional condition circumscribing Defendants' proposed fund transfer to the Yeshiva. That additional condition is bolded in the excerpt below. The Court's revised Order in the TRO Clarification Ruling is as follows:

> The Court ORDERS that Defendants may make the requested transfer if, but only if: (1) the Connecticut Superior Court rules that the Yeshiva has the right to make a substitution in the Foreclosure Action; (2) the transfer is made to the Yeshiva in accordance with the Connecticut Superior Court's instructions regarding the form and preservation of any such substitution; (3) if Defendants must transfer assets to obtain the substitution (for example, the sale of property for funds to substitute for the judgment lien), they must do so only to the extent necessary to obtain the substitution; (4) the effect of a substitution, followed by a final judgment in Plaintiff's favor in the Foreclosure Action, will be immediate partial satisfaction of Plaintiff's judgment against the Yeshiva, in the amount determined by the Connecticut Superior Court in the Foreclosure Action; and **(5) Defendants ultimately retain title to**

> **the Yeshiva Property to compensate for the reduction in Defendants' assets resulting from the transfer.**[8]
>
> Finally, if the Connecticut Superior Court authorizes the Yeshiva to substitute cash for the judgment lien in the Foreclosure Action, Defendants must transfer funds to the Yeshiva only in the precise amount the Connecticut Superior Court authorizes.
>
> This is the resolution in the Foreclosure Action that the record on the present motion contemplates. For the reasons stated *supra*, Defendants' [Motion to Modify] is DENIED. To the extent that the Motion to Modify asks that the TRO be clarified, this request is GRANTED, and the TRO is clarified in the manner set forth in this Ruling.

VII. CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Reconsideration is GRANTED. Moreover, the Court's Order in the TRO Clarification Ruling is revised as set forth in Section VI *supra*.

It is SO ORDERED.

Dated: New Haven, Connecticut
February 21, 2022

/s/ Charles S. Haight, Jr.
CHARLES S. HAIGHT, JR.
Senior United States District Judge

[8] In the TRO Clarification Order, the Court stated that Defendants' "interest in using their funds in such a way that Mirlis's judgment lien against the building is satisfied and the Yeshiva retains possession of the Yeshiva Property" would not violate the TRO. Doc. 98 at 15. To the extent that this language contradicts the Court's revised Order in the TRO Clarification Ruling, this language is stricken from the TRO Clarification Ruling.

EXHIBIT F

BerkshireBank
PO Box 1308, Pittsfield, MA 01202

00004230-0008459-0001-0001-MIMR8901350102221747

Statement of Account

Last statement: November 30, 2021
This statement: December 31, 2021
Total days in statement period: 31

[redacted] Page 1 of 1

Direct inquiries to:
800-73-5601 OR
BERKSHIREBANK.COM

Berkshire Bank
PO Box 1308
Pittsfield, MA 01202-1308

EDGEWOOD ELM HOUSING INC
PO BOX 2966
NEW HAVEN CT 06515-0066

0

Summary of Account Balance

Account	Number	Ending Balance
Business Checking 508	[redacted]	$138,745.90

TRANSACTION LIMITATIONS AND EXCESS TRANSACTION FEES FOR TRANSFERS FROM A MONEY MARKET OR SAVINGS ACCOUNT TO OTHER ACCOUNTS OR TO THIRD PARTIES BY PREAUTHORIZED, AUTOMATIC, ONLINE BANKING, TELEPHONE TRANSFER, CHECK, DRAFT, DEBIT CARD, OR SIMILAR ORDER NO LONGER APPLY.

[redacted]

Account number [redacted]

Date	Description	Additions	Subtractions	Balance
11-30	Beginning balance			$138,745.90
12-31	Ending totals	.00	.00	$138,745.90

** No activity this statement period **

00004230-0008459-0001-0001-MIMR8901350102221747[0000138230]-0000138461

GE Credit Union
Your money. Your dreams. Our commitment.™

Statement of Account

Account Number: [redacted]
Statement Period: 10/01/21 to 12/31/21

FOH INC
PO BOX 2966
NEW HAVEN CT 06515

WDY3-GEF001-001328

SHARES

Posting Date	Effective Date	Transaction Description	Transaction Amount	New Balance
ID 0000 REGULAR SAVINGS				
10/01		Beginning Balance		23.00
12/31		Ending Balance		23.00
		Dividends Paid Year to Date	0.00	
ID 0070 BUSINESS SUPER MONEY MARKET				
10/01		Beginning Balance		65,073.49
10/31		Deposit Dividend Tiered Rate	8.29	65,081.78
		Annual Percentage Yield Earned 0.150% from 10/01/21 through 10/31/21		
11/30		Deposit Dividend Tiered Rate	8.02	65,089.80
		Annual Percentage Yield Earned 0.150% from 11/01/21 through 11/30/21		
12/31		Deposit Dividend Tiered Rate	8.29	65,098.09
		Annual Percentage Yield Earned 0.150% from 12/01/21 through 12/31/21		
12/31		Ending Balance		65,098.09
		Dividends Paid Year to Date	97.56	

YEAR TO DATE INFORMATION

Description	Amount
Total Dividends Paid Year to Date	97.56